

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 03-0031**

**Sales Tax**

**For the Calendar Years 1998, 1999, 2000, & 2001**

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**ISSUE**

I. **Tax Administration** – Penalty

**Authority:** IC 6-8.1-10-2.1(d); 45 IAC 15-11-2;

The taxpayer protests the negligence penalty.

**STATEMENT OF FACTS**

The negligence penalty was assessed on a Department sales and use tax audit conducted for the years the calendar years 1998, 1999, 2000, & 2001.

The taxpayer is a company located in Indiana.

I. **Tax Administration** – Penalty

**DISCUSSION**

The taxpayer requests the negligence penalty should be abated as the error was unintentional, and, the taxpayer initiated the audit.

The Department points out that there is no provision in the Indiana tax regulations that waives penalty when a taxpayer initiates the audit. Also, the error in the audit was 24% which the Department considers material.

45 IAC 15-11-2(b) states, "Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the

Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

The Department finds the taxpayer was inattentive of tax duties. Inattention is negligence and negligence is subject to penalty. As such, the Department finds the penalty proper and denies the penalty protest.

**FINDING**

The taxpayer’s penalty protest is denied.